IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

SPL. APPL. WRIT No. 713 of 1999

DR. NARENDRA KUMAR
V/S
STATE & ANR

Mr. MS SINGHVI, for the appellant / petitioner

Mr. JP JOSHI, for the respondent

Date of Order : 6.12.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

REPORTABLE

ORDER

This appeal has been filed against the judgment of learned Single dt. 11.2.1999, dismissing the petitioner's writ petition.

The petitioner has filed the present writ petition, way back on 31.3.1998, seeking to pray a direction against the respondent no.2 Rajasthan Public Service Commission (hereafter referred to as the Commission) to forward the name of petitioner to State Government, for appointment on the post of Assistant Professor in Radio Therapy, in pursuance of the requisition sent by the State Government on 17.3.1998, the other direction claimed is in furtherance of the above, viz. to direct the State Government to accord appointment to the

petitioner on the post of Assistant Professor in Radio Therapy, on and from the date of filing of present writ petition with all consequential benefits, and it has also been prayed that the letter of refusal dt. 25.3.1998, issued by the Commission be ordered to be placed on record, and be declared illegal, and be quashed. The other relief claimed is for direction to the Commission to prepare fresh selection list of two candidates, and include the name of the petitioner therein, and the State Government be directed to give appointment to the petitioner on the post of Assistant Professor in Radio Therapy, on and from the date of filing of the present writ petition with all consequential benefits.

The facts as arising in the writ petition are, that the petitioner is already in service as Medical Officer, having been duly selected by the Commission; while in service, the Commission issued advertisement on 1.7.1997, inviting applications for various posts of Assistant Professors, which included one post of Assistant Professor in Radio Therapy. The advertisement has been produced as Annexure-1. The petitioner applied for selection, only three candidates appeared in the interview, and after selection the Commission prepared the select list of one candidate, and reserve list of one candidate. The petitioner figured in the reserve list. Intimation whereof was given to the petitioner vide Annexure-3. The select

list was forwarded by the Commission to the State Government on 3.10.1997. It is then alleged that as a matter of fact two vacancies were due to be available in the year 1997-98, because other vacancy was to become available on promotion to be made on the post of Associate Professor, and that such vacancy, in fact, did become available, on promotion of Dr. Ajay Sharma. This promotion was made against the vacancy of the year 1997-98, and therefore, this vacancy was to be filled up by Commission, as the vacancies are required to be determined under Rule 8A of the Rajasthan Medical Service (Collegiate Branch) Rules, 1962, hereafter referred to as the Rules of 1962, as on 1st April of every year. It is alleged, that the person selected in the main list has already been given appointment, and the other post became available consequent upon promotion of Dr. Ajay Sharma in February, 1998, therefore, the requisition was sent by the State to the Commission on 17.3.1998 to send the name of the persons placed in the reserve list, i.e. the name of the petitioner, for making appointment. It is alleged that notwithstanding the receipt of requisition, the Commission did not forward the name, and later sent refusal to the State vide communication dt. 25.3.1998. It is alleged that the Commission has not forwarded the name, on the ground, that vacancy on which the State wants the name of the petitioner, for giving appointment has not arisen on account of failure of the selected candidate to join, and

therefore, the name of the candidate placed in the reserve list cannot be forwarded. Reference has been made by the Commission to Rule 20 of the Rules of 1962, which provides for recommendation of the Commission, preparation of select list, and the reserve list, and relying upon this provision it is contended that in the matter of forwarding the name of the candidate placed in reserve list to the State Government, on requisition sent by the State Government, within six months from the date on which the original list is forwarded by the Commission to the Government, it is not within the domain of the Commission, as to on which vacancy the State Government proposes to give appointment, and therefore, the Commission has exceeded its jurisdiction in refusing to forward the name. Then, the petitioner has also assailed the correctness of the determination of the vacancy to be forwarded to the Commission for appointment, as according to him two vacancies should have been sent. It is also alleged that since vacancy has arisen during currency of the reserve list, the petitioner is entitled to get appointment on that post, and it is not within the domain of the Commission to withhold the name of the petitioner from being sent to the State Government on being requisitioned.

A reply to the writ petition has been filed by the Commission, contending interalia, that in the instant case the vacancies were duly determined by the appointing

authority in accordance with the provisions of Rule 8A, and the requisition was sent to the Commission for holding the recruitment, and since only one vacancy was determined, advertisement was issued by the Commission for one post of Assistant Professor of Radio Therapy. A stand was taken by the Commission, that any vacancy becoming available after 1.7.1997, when the advertisement was issued by the Commission, cannot be filled in by recruitment already held for one post, and such vacancy cannot be filled up by recruitment already held for one post, nor such vacancy can be filled up from amongst the candidates placed in the reserve list either. It is contended that the reserve list can be operated, only when, a candidate placed in the main list does not join the post, or he is found ineligible, while in the present case since the candidate placed in the main list had already joined his post, the candidate finding place in the reserve list was not entitled to claim appointment, on the vacancy becoming available subsequently. It is pleaded, that as per law, the State Government was not entitled to fill up the posts from the reserve list, and a fresh advertisement was required to be issued for filling up the additional posts becoming available after the recruitment process was complete, and therefore, the Commission did not recommend the name of the petitioner, who figured in the reserve list. The stand taken by the petitioner on the anvil of Rule 20 was contested, and it was pleaded, that it is settled law, as

laid down by various authoritative pronouncements of Hon'ble the Supreme Court, that the reserve list can be operated only for the vacancy advertised, if the duly selected candidate in the main list does not join, or having been found to be ineligible. However, no candidate finding place in the reserve list can be appointed against any vacancy becoming available subsequent to the recruitment process. Interalia with this it was pleaded that the writ petition be dismissed.

Then, a reply has also been filed on behalf of the State Government, contending interalia, that in the year 1997 only one vacancy was there, and therefore, it was accordingly advertised, and on the other vacancy coming into existence, on account of promotion, requisition was sent to the Commission on 17.3.1998, but the commission, in view of the judgment rendered in Civil Writ Petition No. 3541/96, decided on 7.7.1997 (in Dr. M.K. Gaur's case) refused to forward the name from reserve list. Then, it is pleaded, that the vacancy was rightly determined as on 1.4.1997, because only one clear cut vacancy was available, for which requisition was sent. So far other vacancy, occurring on 28.1.1998, due to promotion of Dr. Ajay Sharma is concerned, the intimation cannot be sent to the Commission prior to occurrence of vacancy, and the petitioner is trying to confuse this Court by asking the Government to determine the vacancy in advance. Interalia

with this, it is prayed by the State also, that the writ petition be dismissed.

A rejoinder has also been filed by the petitioner, to the reply of respondent no.2, reiterating that the determination of vacancies by the appointing authority was not in accordance with the Rules, as the two vacancies were available, but only one vacancy was got advertised. Then, it was maintained that it is none of the functions of the Commission to examine the nature of vacancies for which requisition was sent by the State Government, rather it is for the State Government to determine, as to how the post is required to be filled, and that, it is beyond the jurisdiction of the Commission to withhold the name to be sent to the State Government. It was also contended, that it is no-where provided in the Rules of 1962, that reserve list can be operated only when a candidate placed in the main list does not join the post, or he is found ineligible, rather the rule making authority found, that names out of the reserve list can be requisitioned upto a period of six months, and therefore, the name of the petitioner was required to be forwarded, and he could be appointed. For this purpose relying on Virendra Singh Huda's case it was contended, that in that case though Hon'ble the Supreme Court was not dealing with the rules as are in the present case, and that, Hon'ble the Supreme Court need not restricted the power of the State

Government, rather it is for the policy makers to determine, as to whether, in what manner, the appointment should be made.

The learned Single Judge found, that it is settled proposition of law, that a vacancy, which had not been advertised, cannot be filled up, otherwise it will clearly violate the fundamental rights enshrined in Article 14, and 16 of the Constitution of India. The vacancies which came into existence in January 1998 could not be filled in from the reserve list, prepared in pursuance of the advertisement dated 1.7.97, as it would amount to filling up future vacancies, and would be violative of the mandate of law. The reliance was placed by the learned Single Judge on the judgments of Hon'ble Supreme Court, in Gujarat State Deputy Executive Engineers' Association Vs. State of Gujarat, reported in 1992 Suppl. (2) SCC-591, wherein Hon'ble the Supreme Court had quashed the appointments made from the reserve list, over and above the vacancies advertised, by holding it to be improper exercise of powers, and that, it is only in a rare and exceptional circumstance, and in emergent situation, that this rule can be deviated from, and it can be done only after adopting policy decision, based on some rational, as the authority cannot fill up more posts than advertised, as a matter of course. The other judgments of Hon'ble the Supreme Court, in Prem Singh Vs. Haryana State Electricity Board, reported

in 1996(4) SCC-319, and Union of India Vs. Ishwar Singh Khatri, reported in 1992 Suppl. (3) SCC-84 have also been relied upon, in which also same view was taken. Interalia with these conclusions, the judgment of Hon'ble the Supreme Court, in Surinder Singh Vs. State of Punjab, reported in 1997(8) SCC-488, was also relied upon, for the proposition, that since the vacancies have not been worked out properly, therefore, the candidates from reserve list were liable to be appointed, does not appear to be a sound proposition of law, as this may result in depriving those candidates, who became eligible for competing the vacancies, available in future. With these conclusions it was held, that there is no justification for the State Government to send requisition, for the post, which had not been advertised, and came into existence in January, 1998, and therefore, the writ petition has been dismissed.

Assailing the impugned judgment it is argued by the learned counsel for the appellant, firstly that there is no power available with the Commission to withhold or decline to send the names of the candidates, finding place in the reserve list, according to Rule 20 of the Rules, and as the Commission is only required to be consulted regarding certain matters enumerated in Article 320 of the Constitution, but then, the appointment is to be made by the appointing authority, and even the candidates finding place in the reserve list, are also candidates adjudged

suitable by the Commission, and therefore, irrespective of permissibility of being appointed on vacancy occurring after the select list, the Commission had no jurisdiction whatever, to decline to forward the name to the State Government. Then, regarding the appellant's entitlement to appointment, learned counsel for the appellant relied upon the judgment of Hon'ble the Supreme Court, in Virender S. Hooda Vs. State of Haryana, reported in (1999) 3 SCC-696, and Dr. Uma Kant Vs. Dr. Bhika Lal Jain, reported in AIR 1991 SC-2272, and submitted, that both these judgments are the judgments rendered by a Bench comprising of three Hon'ble Judges, wherein it has clearly been ruled, that the appointments can be made of the candidates from and out of the reserve list.

On the other hand, learned counsel for the respondent Commission, on the basis of provisions of Article 320 of the Constitution, submitted, that the Commission has constitutional existence, and discharges constitutional functions, as catalogued in Article 320 of the Constitution, and the appointing authority has to act in accordance with the mandate contained in Article 320, and on a proper reading of Article 320 it is clear, that it does very much confer power on the Commission, to decline to send the names of the candidate, whom the Commission feels, is not capable of being appointed, in accordance with the Rules, as, if such appointments were to be made,

they would not be in conformity of law. In this regard reliance is placed on a Division Bench judgment of this Court, in Dr. M.K. Gaur Vs. State of Rajasthan, reported in RLW 2003(2) Raj.-870, and Madan Lal Vs. State of J. & K., reported in (1995) 3 SCC-486, wherein it has clearly been ruled that the person finding place in reserve list cannot be appointed, on the post coming into existence, or occurring, after the selection process is over, inasmuch as the appointment can be made only on the posts advertised, rather the post which had been a subject matter of selection exercise, and that the reserve list is to be operated only to the extent of filling in the vacancies advertised, or the vacancies which had been subject matter of selection exercise. Thus, it is only in the event of the advertised vacancies not being filled in, for one reason, or the other, from out of the select list, then, only during the currency of the reserve list, the candidates in order of merit, from reserve list, can be taken up for appointment on those posts, but in any case, the appointment cannot be made on those posts, which are not the subject matter of selection process, including the post which may have become subsequently available.

We have considered the submissions, and have gone through the various judgments cited at the Bar, and the material on record.

We find in the file of this D.B. Special Appeal, an additional affidavit was filed by the appellant on 1.4.2000, deposing interalia, that one post of Assistant Professor in Neurology was advertised, against which Dr. Vijay Sardana was selected and placed in the merit list, while Dr. Arvind Vyas was placed in the reserve list, and that Dr. Vijay Sardana was given appointment on the post of Assistant Professor, then subsequently the State Government sent requisition to the Commission for sending the name of the person placed in the reserve list for giving appointment, and in response whereof the Commission sent the name of Dr. Arvind Vyas, who was given appointment vide order dt. 30.10.1999, which has been produced as Annexure-B. It is thus contended, that the Commission has forwarded the name of the person beyond the number of posts advertised, on the requisition of the State Government, whereas in the case of the appellant it has declined to do so. Thereupon a reply additional affidavit has also been filed on behalf of the Commission, producing therewith a copy of the letter of the Commission, sent to the State Government, the communication of the Commission being dt. 25.3.1998, communicating its inability to forward the name of the petitioner; and regarding the matter of Dr. Vyas, deposing, that the Commission received the requisition on 8.10.1999, as new post was created on 2.7.1999, i.e. before completion of the selection process, and the matter was seriously deliberated in the Commission, the Commission

considered the judgment of Hon'ble the Supreme Court, in Virendra Singh Hooda's case, and came to the conclusion, that in view of that judgment the Commission was required to recommend the name from reserve list, and therefore, the name was recommended vide Annexure R/4 dt. 21.10.1999. Thus, the stand taken in the affidavit is, that the post, in that case, had come into existence before completion of selection process. Learned counsel for the appellant by inviting our attention to this affidavit also submitted, that from the perusal of these affidavits it is clear, that the Commission did also feel, that the names of the candidates finding place in the reserve list, can also be sent to the State Government, to fill vacancies coming into existence after the advertisement i.e. for the vacancies, which had not been the subject matter of selection exercise. However, this, according to the Commission, can be done only where the vacancy has come into existence before completion of selection process. Thus, it is contended, that the conduct of the Commission is clearly discriminatory.

Since the controversy revolves around the provisions of Rule 20 of the Rules, we may gainfully quote the provisions of Rule 20, which reads as under:-

> "20 Recommendations of the Commission:- The Commission shall prepare a list of the candidates whom they consider suitable for appointment to the

> posts concerned arranged in the order of merit and forward the same to Government:
>
> Provided that the Commission may to the extent of 50% of the advertised vacancies, keep names of suitable candidates on the reserve list. The names of such candidates may on requisition, be recommended in the order of merit to Government within 6 months from the date on which the original list is forwarded by the Commission to Government."

After quoting the above rule, in our view, the case involves two aspects of the matter, first being, as to whether the Commission was justified in declining to forward the names of the petitioner vide Annexure R/3 dt. 25.3.1998, and the other being, as to whether the appellant is entitled to be appointed, on the post of Assistant Professor? We may first of all take up the various case law cited at the Bar.

First of all coming to the judgment in Madan Lal's case, this judgment is rendered by a Bench comprising of two Hon'ble Judges, and therein in para-23, 24 and 27 Hon'ble the Supreme Court has considered the aspect of permissibility of the appointment to be made from out of the select list. It may be observed here that in that case there were not two lists like select list, or reserve list, and only one list was prepared, and therefore, when the Hon'ble Supreme Court considered the question, as to what number of candidates from out of that list could be

appointed, and held that, since only 11 vacancies were existing and advertised; select list would be treated to be of 11 candidates only, and nine additional candidates can only be treated as wait listed candidates, and thus from the list of 20, in order of merit, only 11 candidates could be appointed. With this Hon'ble the Supreme Court referred to Rule 41 of the relevant Rules, which provides, that the select list will have a life of one year from the date of publication in the Government Gazette, or till exhaustion of post by appointment of candidates, whichever is earlier, and held, that the Commission may, by abundant caution, prepare a merit list of 20 or even 30 candidates, as per interse ranking on merit, but since the recruitment is only for 11 vacancies, the moment 11 vacancies are filled in from the merit list, the list gets exhausted, or if during the span of one year from the date of publication of such merit list all the 11 vacancies are not filled in, the moment the year is over, the list gets exhausted, and in either event, thereafter if further vacancies are to be filled in, or remaining vacancies are to be filled in, after one year, a fresh process of recruitment is to be initiated, giving a fresh opportunity to all the open market candidates to compete.

Then, coming to Dr. M.K. Gaur's case, this was a case, where the persons finding place in the reserve list were sought to be appointed on additional vacancies which

were not advertised, and that contemplated action was challenged by the petitioner. The learned Single Judge, interpreting Rule 20, allowed the writ petition, and respondents were restrained from making further appointment by operating the reserve list. This was by judgment dt. 7.7.1997, passed in S.B. Civil Writ Petition No. 3541/96, against which special appeal was filed, and the Division Bench considered the judgments in Gujarat State Dy. Executive Engineers' Association's case, judgment in State of Bihar Vs. Madan Mohan Singh reported in (1994) Supp. (3) SCC-308, Madan Lal's case, Prem Singh's case, and various other judgments, including Surjit Singh's case, and upheld the judgment of learned Single Judge. It was held, that the select list of required number of candidates for appointment under Rule 16 is prepared by the Commission. Proviso to this Rule permits the Commission to prepare reserve list to be operated if requisition is made by the Government from the reserve list during its existence, and then it was held, that as soon as the selection of candidates of the advertised vacancies culminates into giving of appointments on the vacancies advertised, the reserve list comes to an end, it revives only in the eventuality of the select list becoming re-operational on account of non-joining of the selected candidates, or their leaving the post soon after joining, during the existence of reserve list, which has life of its own under the Rule. It was held, that the Apex Court has clearly propounded,

that a reserve list, prepared in a selection conducted by the commission, does not constitute a source of recruitment, it is operative only in contingency, that if any of the selected candidate does not join, then the person from reserve list may be pushed up and appointed in the vacancies so caused, or if there is some extreme exigency, the government may as a matter of policy decision pick up the persons in order of merit from the reserve/waiting list, and that the selection process comes to an end after the candidates from advertised vacancies are appointed.

Then, coming to Dr. Uma Kant's case; in this case it was held, that the selection committee constituted is to recommend the candidate, not only in the order of merit, but is also to further prepare a reserve list to the extent of 50% of the vacancies, and persons kept in the reserve list will be considered as having been selected for the concerned post, and shall be entitled for appointment, if any vacancy is caused during the validity period of the reserve list. The suitability of the persons kept in the reserve list is also adjudged by the selection committee which is constituted for selection of a teacher in the university. Thus it was found, that the very purpose of preparing a reserve list would be defeated, if it is assumed, that once a person selected by the selection committee has joined that post, then selection made by the

committee is exhausted, and the reserve list is of no avail, and becomes extinct.

Then, in Virendra Singh Hooda's case also it was held by Hon'ble the Supreme Court, that when the vacancies arose within six months from the date of previous selection, the circulars dated 22.3.1957 and 26.5.1972, declaring the policy of the Government are attracted, and those vacancies have to be filled in from out of waiting list.

Then, in Gujarat State Dy. Executive Engineers' Association Vs. State of Gujarat, reported in (1994) Supp. (2) SCC-591, it has been held by Hon'ble the Supreme Court, that the operation of a waiting list should be confined to the vacancies notified for the examination, and not for any vacancy arising in future, unless a policy decision is taken by the Government to that effect, as appointment in future vacancies from waiting list, prepared by the Commission, should be an exception, rather than the rule. It has many ramifications.

At this place we may gainfully quote the provisions of Article 320 of the Constitution, which reads as under:-

"320. Functions of Public Service Commissions.—(1) It

shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(*a*) on all matters relating to methods of recruitment to civil services and for civil posts;

(*b*) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(*c*) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(*d*) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(*e*) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so

> referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them:
>
> Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.
>
> (4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.
>
> (5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid."

On review of the aforesaid judgments cited at the Bar, and even by closest reading of Article 320 of the Constitution, we are not satisfied, that the Commission is vested with any power, or discretion, to decline to forward name of any of the candidate, finding place in the reserve list, when a requisition is sent by the appointing authority, during the period of currency of the reserve list.

The question as to whether such person can be appointed, or not, is another question involved in this case, which we would deal later, but so far as the powers of Commission are concerned, according to Article 320, the Commission is to conduct examination for appointment to serve, as provided therein, and is to assist the Union or the State concerned, and the Commission is required to be consulted on all matters relating to method of recruitment to civil services, and for civil posts, so also on the principles to be followed, in making appointments to the civil services and posts, and in making promotion, and transfer from one service to another, and on suitability of the candidate for such promotion, or transfer. The word "consult" has been a subject matter of adjudication by Hon'ble the Supreme Court more than once, and the interpretation consistently taken, of word "consult" does clearly show, that simply because the Commission is required to be consulted on these matters enumerated in Article 320(3), it does not confer any power on the Commission, either to decline to forward the name/s, on being requisitioned, during the currency of the reserve list, or to indirectly decline, by sitting tight over the matter. We may also notice here, that as appears from the facts pleaded in the additional affidavit, and reply additional affidavit, that it is not in dispute, that on subsequent occasions, the Commission has forwarded the name

of Dr. Vyas, from out of reserve list, for being appointed on a post, which was not a post advertised, nor was a post being the subject matter of selection process or arose due to non joining. A novel theory has been propounded, that vacancy had come into existence during the completion of selection process. We fail to comprehend, as to under what provisions of Rules, this additional category has been cast by the Commission. Of Course, the Commission has purported to rely upon the judgment in Virendra Singh Hooda's case. In our view reliance on Virendra Singh Hooda's case is wholly misconceived, and discriminatory, and reasons in this regard are being given by us in forthcoming paras. Thus in our view, taken from any standpoint, the act of the Commission, in declining to forward the name of the petitioner, and addressing communication dt. 25.3.1998, cannot be sustained.

Then, coming to the second aspect of the matter, being about the appellant's entitlement to be appointed against the vacancy which occurred on 28.1.1998, in this regard a look at Uma Kant's judgment, once again, on which strong reliance has been placed by the learned counsel for the petitioner, does show, that there was a specific provision made in the resolution adopted by the Syndicate in its meeting held on 10.7.1978, to the effect, that the Selection Committee may draw a reserve list of suitable candidates up to a number not exceeding 50% of the number

of post for which vacancies exist, and place them in order of priority. Then, the other part of the resolution was, that the reserve list if drawn be treated valid upto six months of the date of approval by the Syndicate of the recommendation of the selection committee, and the third part of the resolution was that "on the vacancies caused within the cadre during six months of the approval of the recommendations, the candidates found suitable and placed in the reserve list be appointed in the order of priority given by the Selection Committee". In our view, this clearly did constitute a policy decision of the University, and did confer the power to make appointments on the vacancies caused within the cadre, during the period of currency of reserve list, from out of candidates placed in the reserve list, in order of priority given by the selection committee. It is in this background, or rather on the face of these provisions, that the findings given as above, were given. Likewise in Virendra Singh Hooda's case also there were two circulars issued by the Government, way back on 22.3.1957 and 26.5.1972, providing, that when vacancy arises within six months from receipt of recommendation of the Public Service Commission, they have to be filled up from the waiting list maintained by the commission, and that, in respect of vacancies which arise after the expiry of six months, it is necessary to send new requisition to the Commission. In Uma Kant's case the selection exercise was undertaken much after the resolution

of the Syndicate, inasmuch as the resolution of the Syndicate was of the year 1978, and the selection exercise related to the year 1989. Likewise in Hooda's case the circulars are of 1957 and 1972, and the selection exercise was undertaken in the year 1992. Thus, these circulars of the Government were taken into account by Hon'ble the Supreme Court, finding, that these directions being not contrary to law, were required to be followed.

So far the case in hand is concerned, no such provision, or a policy decision by the State Government, has either been pleaded, or placed on record, or even shown, on behalf of petitioner-appellant. Of course, it was contended, that when the State Government send requisition to the Commission vide letter dt. 17.3.1998, that did amount, to the state government taking policy decision. We are afraid, that even a bare reading of the said communication dt. 17.3.1998 does not show, that the State Government even purported to take any policy decision, rather it was a requisition sent for one individual post, calling name of one candidate from the reserve list. Thus, sending of this requisition was an isolated act of the State Government, and by no stretch of imagination it can be described as any policy decision, taken by the State Government.

In that view of the matter, the judgments of

Hon'ble the Supreme Court in Uma Kant's case and Virendra Singh Hooda's case do not help the appellant. On the other hand, the judgment in Gujarat State Dy. Executive Engineers' Association's case, Madan Lal's case and Dr. M.K. Gaur's case, are complete answer to the claim of the appellant. On the face of these three judgments, even if the Commission were to forward the name of the appellant, and even if the State Government were to go out of way, with a view to even oblige the appellant, we do not find the appellant to be entitled to the relief of being given appointment.

Consequently, the appeal is partly allowed. The communication of the Commission dt. 25.3.1998 is quashed, being without jurisdiction, but the appellant is held to be not entitled to be given appointment, on account of his name finding place in the reserve list.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

/sushil/